

DEFOULT
11/14/84

SEP 18 1984

Dear Applicant:

We have considered your application for exemption from Federal Income Tax as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954. You state that you are a private operating foundation.

The information submitted discloses that you were organized under a trust agreement entered into between [REDACTED] (as "Trustor"), and [REDACTED], a corporation (as "Trustee").

The Trustor transferred to the Trustee certain real property which included on its premises [REDACTED] dedicated to the public and a driveway to the cemetery. Also located on the premises and adjacent to the cemetery is [REDACTED], consisting of house, barns, well, watering trough, trees, fences and other improvements. While the trustor lived, the income of principal from the trust estate was to be distributed to the trustor.

Upon the death of the Trustor and her burial, no further burials were to be made in this cemetery, and the Trustor's primary duty was to provide funds for the maintenance and preservation of the [REDACTED] cemetery and homestead and to make distributions to two designated religious organizations.

The trust was funded on [REDACTED], with bequest of farmland and cash. The farmland is being rented out on a crop share basis, and idle cash is, and will be, invested to earn interest. The investment earnings, and the proceeds from the sale of the crops will be used as set forth in the Trust agreement.

Section 501(c)(3) of the Code provides for the exemption of organizations which are organized and operated exclusively for religious, charitable, and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

de	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
name	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]		
te	9/4/84	9/4/84	9/4/84	9/4/84	9/14/84		

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in that section. If any organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3) of the regulations provides that an organization is organized for one or more exempt purposes only if its Articles of Organization limit its purposes to one or more exempt purposes under section 501(c)(3) of the Code.

Section 1.501(c)(3)-1(b)(1) of the regulations provides that an organization is not "organized exclusively" for one or more exempt purposes if its organizing document expressly allows it to carry on, other than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose.

According to the information submitted, [REDACTED] Trust was formed primarily to maintain and preserve [REDACTED] homestead with earnings from share crops and investments. The Trust will contribute to designated religious organizations only in those years in which there is income available for charitable distribution. The maintenance and preservation of a cemetery and homestead are not permissible exempt purposes under Code section 501(c)(3). Although making contributions to exempt religious organizations is charitable, your organizational document does not limit your purposes to operations exclusively to charitable purposes.

Accordingly, we have determined that you are not eligible for recognition of exemption from Federal Income Tax under section 501(c)(3) of the Code. Since you are not exempt under Code section 501(c)(3), a determination as to whether or not you are a religious foundation is moot. You are required to file income tax returns as required.

Contributions made to you are not deductible as charitable contributions as defined in section 170(c) of the Code.

As provided by section 6104(c) of the Internal Revenue Code and the applicable regulations, the appropriate State authorities have been notified of our determination.

If you are in agreement with this proposed determination, you should sign and return the enclosed agreement to the IRS. The instructions for signing are on the reverse side of the agreement.

[REDACTED]

If you are not in agreement with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange a date for a hearing. The hearing may be held at the office of Regional Director of Appeals or, if you request, at a mutually convenient District Office. A self-addressed envelope is enclosed.

If we do not hear from you within 30 days from the date of this letter, and you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies and will then become our final determination. Section 7420(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding before the Tax Court, the Court of Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,

[REDACTED]
District Director

Enclosures:

Publication 892
Form 6016

cc: [REDACTED]

[REDACTED]